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Tax Alert

Australian public country-by-country reporting Bill progress update

At a glance

- ▶ Senate Committee has recommended that the Bill which includes the PCbCR measures should be passed by Parliament.
- ▶ New disclosures apply in respect of financial reporting periods commencing on or after 1 July 2024.
- ▶ Application to certain groups with more than \$1bn revenue with an Australian income de minimis and scope to apply for exemptions.
- ▶ Disclosure on country-by-country basis for Australia and specified jurisdictions
- ▶ Aggregation of information is allowed for other jurisdictions.
- ▶ Significant penalties for non-compliance.
- ▶ How EY can help.

The recommendation by a Senate Committee that the Bill¹ which includes the proposed Australian public country-by-country reporting measures (PCbCR) should be passed by Parliament has moved these measures another step closer to reality.

Australia's PCbCR requires certain large Australian groups and Australian and foreign-owned multinational enterprises (MNEs) to prepare certain information on a country-by-country basis for public release by the Australian Taxation Office (ATO) for the 2024/25 and later financial years.

Australia's public CbCR regime will be the most comprehensive PCbCR regime globally and additional work will be required by covered groups to comply compared to disclosures for confidential CbCR and under the EU PCbCR directive. Significant administrative penalties may apply for late lodgement and criminal penalties may apply for non-compliance in some circumstances.

The measures are part of the Government's Multinational Tax Integrity and Transparency Plan announced in the 2022-23 Federal Budget (following its election commitment). They follow the new financial statement additional disclosure of subsidiary information measures, including their tax residence, by Australian public companies, applicable from the 2023/24 year².

The Senate Economics Legislation Committee's (SELC) report following its inquiry into the Bill was published on 2 August 2024. The Bill was introduced into Parliament on 5 June 2024 and is currently before the Senate. After considering submissions the SELC concluded that the PCbCR (and the other Bill measures) should be passed as introduced.

The Bill includes only a limited number of changes from the second exposure draft issued in February 2024, notwithstanding submissions from EY and others. In particular the information to be disclosed, the compulsory use of statutory financial statements and the commencement date are unchanged.

The proposed rules are very wide in scope and will require careful review by impacted groups to determine their application and potentially significant work to ensure systems are in place to comply with these new reporting obligations.

Notwithstanding the timeline for providing the first reports, groups must understand now if they will subject to the disclosures and should start implementing systems to capture and report the required information, which will potentially involve teams across multiple jurisdictions, before the end of the 1st reporting year.

¹ Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024, Sch 4

² In the new consolidated entity disclosure statement (CEDS)

Key features

- ▶ The measures apply to financial reporting periods commencing on or after 1 July 2024.
- ▶ They apply to the ultimate parent entity of certain Australian groups and MNEs that have a presence in Australia, which have a global consolidated revenue in excess of AU\$1b. This includes Australian groups with solely domestic operations.
- ▶ De minimis – An entity is only subject to reporting if AU\$10m or more of their aggregated (global) turnover for the income year is Australian-sourced.
- ▶ Aggregation of required information is allowed for a jurisdiction unless a jurisdiction is designated as a specified jurisdiction. The list of specified jurisdictions is currently significantly longer than that of the EU PCbCR rules and includes Hong Kong, Switzerland and Singapore.
- ▶ Exemptions from disclosing some or all information may be granted on a class or entity basis.
- ▶ Significant penalties will apply for not providing the required information on time. In addition, criminal penalties may apply in certain situations.
- ▶ Covered entities must publish the selected tax information on an Australian government website, by providing the Commissioner of Taxation (the Commissioner) with the information in an approved form, within 12 months of the end of the relevant financial year. The Commissioner will then facilitate publication.
- ▶ The ATO must be notified of any material errors in that published information within 28 days of becoming aware of them and provide the correct information. Failure to do so attracts the same penalties as mentioned above. Entities may also correct any other non-material errors.

Affected groups

The new legislation applies to the ultimate parent entity (the CBC reporting parent) of MNEs and purely domestic Australian groups that have an annual global consolidated income (ie. revenue) in excess of AU\$1b in the previous year, where:

- ▶ The CBC reporting parent is a member of a CBC reporting group
- ▶ At any time during the reporting period the CBC reporting parent or another member of the CBC reporting group is either:
 - An Australian resident; or
 - A foreign resident who operates an Australian permanent establishment (PE).

The CBC reporting parent must be either a constitutional corporation or a partnership whose partners are constitutional corporations or a trust of which all trustees are a constitutional corporation. A constitutional corporation includes an Australian or foreign corporation.

The lodgement obligation applies to the CBC reporting parent (i.e. the global parent entity in most instances) regardless of whether that entity is Australian or foreign. The explanatory memorandum (EM) to the Bill makes clear that application to Australian groups with no foreign activities is intended.

Definitions of CBC reporting parents and CBC reporting groups come from the existing law for the confidential subdivision 815-E ITAA Income Tax Assessment 1997 CbCR rules. The definitions widen the application of the rules including to a “notional listed company group” and require careful consideration.

The requirements continue to apply to entities that are below the CbCR threshold in their home jurisdiction, but above the Australian threshold. Accordingly, some organisations that do not currently have any CbCR requirements anywhere in the world will have to prepare all information from scratch. There may be administrative guidance issued by the ATO on this matter.

De minimis exception

Reporting only applies to groups that have more than AU\$10m in Australia-sourced income as part of their aggregated turnover for the current year. Australian sourced income is not defined in the tax law and this will involve a facts and circumstances analysis of the income of group entities and require relevant evidence in order to claim the exception. The calculation of aggregated turnover includes the annual turnover of the entity and its connected entities and affiliates with various exclusions.

Exemptions

The legislation allows the Commissioner to exempt classes of entities and to provide exemptions for specific entities from providing some or all information. The law also allows for government entities to be exempted in some circumstances (as such entities may be subject to alternative government disclosure or accountability regimes).

The EM includes new guidance on when it may be appropriate for the Commissioner to grant exceptions including where information disclosure would breach Australian or foreign laws or reveal commercially sensitive information.

Importantly the exemption will only apply to a single period and groups will need to reapply for further exemptions each year.

The ATO will need to develop guidance on how groups can apply for exemptions and in what circumstances they may be granted.

Reporting requirements

The reporting requirements are:

- ▶ The CBC reporting parent is required to publish general information including a description of the group's approach to tax.
- ▶ For Australia and **each specified jurisdiction** that the CBC reporting group operates in, the CBC

reporting parent must publish, at a group level, certain information (set out in the table below).

- ▶ For other non-specified jurisdictions, the CBC reporting parent has the choice of publishing the same information for all jurisdictions or alternatively publishing slightly reduced information on an **aggregated** basis for all non-specified jurisdictions.

Specified jurisdictions list

A draft instrument was issued in February 2024 which includes a list of 41 specified jurisdictions which the draft explanatory material stated were selected on the basis that they are typically associated with tax incentives, tax secrecy and other matters likely to facilitate profit shifting activities and which broadly aligns with the list of jurisdictions covered by the International Dealings Schedule to the company income tax return.

We note the list includes various 'tax havens' as well as some main trading partners such as Hong Kong, Singapore and Switzerland. The list excludes Cyprus, Ireland, Luxembourg and the Netherlands as they are in the EU and may be subject to the EU PCbCR.

A final instrument list is not expected until after the law is enacted. While comments in the EM to the Bill list some additional factors which will be considered in finalising the list, we do not expect it will change substantially from the draft.

The specified jurisdictions overlap to a certain extent with the EU Annex I (black) and Annex II (grey) lists (for example a number of 'tax havens' are on both lists), but there are also differences. For instance, Hong Kong, Singapore and Switzerland only feature on the Australian PCbCR list and other countries, such as the Russian Federation, only feature on the EU lists.

The full draft list of specified jurisdictions is set out in the appendices.

Source of data and interpretation

Quantitative data must be sourced from audited consolidated financial accounts of the CBC parent for the reporting period or, if none exist, from equivalent statements which would have been prepared had it been a listed company.

All entities and branch operations (PEs) in a jurisdiction are combined.

The Bill makes clear that the information to be disclosed (other than names):

- ▶ Must be identified so as to "best achieve consistency" with disclosures required in the global reporting initiative standard GRI-207: Tax 2019 disclosures in sections GRI 207-1 and 4 (use as primary source of guidance - the disclosures are intended to align with the meaning of those in the GRI 207, even where the terminology is not identical and take precedence over any OECD guidance)
- ▶ Must have regard to the OECD transfer pricing guidelines (2022), OECD Guidance on the Implementation of Country-by-Country Reporting:

BEPS Action 13 2022 version (use where provides greater detail on interpretation of particular terms) and any further documents prescribed by regulation.

The full list of disclosures is below.

Additional requirements may be added by regulation (for example if an additional requirement was added to the GRI 207 standard).

Some key disclosure issues

- ▶ The "approach to tax" is to be prepared based on the guidance set out in the voluntary accounting standard GRI 207-1.

The approach to tax is to be defined at a group level - covering all relevant jurisdictions - which will require a consolidated assessment and formal descriptions of how all entities within the MNE approach tax. For MNEs that already voluntarily follow GRI 207-1, this will be straightforward. However, for MNEs that do not currently have and publish a formalised tax governance framework, the approach to tax will need to be formalised and reviewed from a stakeholder perspective.

- ▶ Many companies will not have an existing obligation to produce information on revenue from related parties that are not tax residents of the jurisdiction as they have not adopted the GRI standard and they will therefore not have an existing process in place to gather and produce this information.
- ▶ Providing an explanation of the difference between tax accrued and profit before tax multiplied by the country tax rate is likely to be a complex process.
- ▶ We note the EM still lists an additional requirement to publish a link to the CBC reporting group's EU PCbCR reporting. However, this requirement is not evident in the Bill.

Penalties

Two sets of penalties may apply for failure to comply with the new disclosure requirements. We anticipate that the ATO will provide guidance in due course concerning how they will seek to apply these penalties and any circumstances where they might be remitted.

The penalties prima facie apply to the CBC reporting parent. There is some uncertainty how the ATO will seek to collect penalties from CBC reporting parents that do not have a direct presence in Australia and ATO guidance is expected.

Failure to lodge on time penalties

A new specific penalty provision applies for providing the PCbCR information late. The penalties are 500 penalty units (AU\$165,000 at proposed new rate of

\$330 per penalty unit³) per part of 28 days late up to a cap of 2,500 penalty units (AU\$825,000 at proposed new rate). These penalties also apply if material errors are not notified to the Commissioner for correction within the required 28 days.

Failure to comply with requirements under a taxation law

The Bill introduces new paragraph 8C(1)(ab) into the Taxation Administration Act 1953, which makes failure to publish the required PCbCR disclosures in the prescribed manner required, a criminal offence.

Conviction would require the Commissioner of Taxation to prosecute in Court, and carries a maximum fine of 20 penalty units for a first time offender (AU\$6,600 at proposed new penalty unit rate), to 50 penalty units (AU\$16,500 at proposed new rate) for a third time offender. We also note that criminal penalties may be imposed for third time offences.

Managing stakeholders and disclosures

There is currently no provision for additional voluntary disclosures which may be needed to assist readers to understand the information published, for example the reasons why a particular jurisdiction may appear to have a low tax burden may not be apparent from what the ATO publishes (e.g. from carry forward tax losses, home country CFC or Pillar Two pickup elsewhere etc.). Groups may therefore want to consider their own additional forms of contemporaneous disclosure to better inform stakeholders.

Reporting entities should expect scrutiny of the PCbCR by the public, media and NGOs including to compare various PCbCR lodgements and other public financial information to look for inconsistencies. As a result, it will be critical for covered entities to take a coordinated approach to their PCbCR requirements across jurisdictions.

Next Steps

- ▶ The Bill is still in the Senate which next sits from 12 August to 22 August 2024. It is uncertain when the Bill might be passed and there is a risk that this might be delayed by concerns with other unrelated proposals in the Bill. Notwithstanding the SELC's recommendations, further amendments can still be made before the law is enacted.
- ▶ Given the far-reaching effects, including the extraterritorial effect and the significant additional

requirements, groups should start preparing for the new rules based on the current Bill.

How EY can help

EY can help you with end-to-end PCbCR tax and data services:

- We can assist groups to carry out a preliminary assessment how the reporting requirements in both Australia and the EU will apply to your organisation and if you are in scope of these transparency measures. This may include an assessment of your Australian sourced income, the availability of any relevant exemptions and how the notionally listed group rules may apply where your organisation is not currently required to consolidate for accounting purposes.
- We can help you to define the data requirements, assess your data readiness, review your information sources, assess how to best obtain the information from your data sources including alignment with your Action 13 CbCR process and provide automation options.
- Analysing your data disclosures to perform a risk assessment and visualisation of your reporting and how different these will look for Australian and the EU reporting.
- We can help prepare or review your tax strategy and governance frameworks (locally and globally) to consider the current approach to tax in light of the transparency measures.
- We can assist you in determining how the transparency measures sit alongside your ESG commitments and communication strategies on the measures with stakeholders including investors, the Board and management.
- We can help you to prepare and lodge the PCbCR in the approved form issued by the ATO in Australia and in the format required by EU regulators.

³ Proposed increase in penalty unit from \$313 to \$330 from 1 July 2024 in a separate Bill before Parliament

Australian PCbCR disclosure requirements	note
Names of CBC parent and entities in CBC reporting group	
Approach to tax description	1
Jurisdiction name	2
Main business activities	3
Number of employees at end of reporting period	3
Revenue from unrelated parties	3
Revenue from related parties that are not tax residents of the jurisdiction	3
Profit (Loss) before tax	3
Book value of tangible assets	3
Income tax paid (cash basis)	3
Income tax accrued (current year)	3
Reasons for difference between income tax accrued and profit before tax multiplied by the country tax rate	2
Currency used in calculating and presenting information	
<p><i>Note 1 - Applies to CbCR parent only</i></p> <p><i>Note 2 - Does not apply to non-specified jurisdictions reporting on an aggregated basis</i></p> <p><i>Note 3 - Applies to aggregated reporting for the area consisting of those jurisdictions</i></p>	

Specified countries list (Australia) ⁴ and overlap with EU Annex I and II lists ⁵			
Andorra	Anguilla	Antigua and Barbuda	Aruba
Barbados	Bahamas	Bahrain	Belize
Bermuda	British Virgin Islands ⁵	Cayman Islands	Cook Islands
Curacao	Dominica	Gibraltar	Grenada
Guernsey	Hong Kong	Isle of Man	Jersey
Liberia	Liechtenstein	Mauritius	Monaco
Montserrat	Nauru	Niue	Panama
Republic of Marshall Islands	Saint Kitts and Nevis	Saint Lucia	Saint Maarten (Dutch Part)
Saint Vincent & the Grenadines	Samoa	San Marino	Seychelles
Singapore	Switzerland	Turks and Caicos	US Virgin Islands
Vanuatu		Countries on both the Australia specified jurisdictions and EU Annex I or II lists	

⁴ Draft Taxation Administration (Country by Country Reporting Jurisdictions) Determination 2024, February 2024

⁵ Note although listed, for reporting year 2024, jurisdictions need to be on the EU Annex list on 1 March 2024 and on 1 March 2023 (two consecutive years) in order to be captured under the EU Directive.

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